

DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS

Advertisement Relating to Real Property

Proposed Readoption with Amendments: N.J.A.C. 13:9

Authorized By: J. Frank Vespa-Papaleo, Esq., Director, Division on Civil Rights

Authority: N.J.S.A. 10:5-8, and 10:5-12

Calendar Reference: See Summary below for explanation of exception to calendar requirement

Proposal Number: PRN 2005-168

Submit comments by July 15, 2005 to:

Gary LoCassio, Assistant Director

Division on Civil Rights

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The agency proposal follows:

Summary

The New Jersey Division on Civil Rights (Division), in the Department of Law and Public Safety, enforces the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to 49. Pursuant to Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1c, the Division's rules governing advertising regarding realty, N.J.A.C. 13:9, expire on October 4, 2005. The Division has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. However, the Division, pursuant to its rulemaking authority found at N.J.S.A. 10:5-8, proposes amendments to N.J.A.C. 13:9 in order to incorporate and clarify recent amendments to the LAD, to ensure consistency with the statutory prohibitions against discriminatory advertising contained in the LAD and to ensure that the Division's regulations are consistent with the Federal Fair Housing Act (FHA), 42 U.S.C. §3601 et seq. and regulations promulgated thereunder. These amendments are required in order for the Division to achieve certification as a substantially equivalent agency by the Department of Housing and Urban Development (HUD), and to enter into a work-sharing relationship with HUD.

The following is a summary of N.J.A.C. 13:9-1.1 and proposed amendments thereto:

N.J.A.C. 13:9-1.1(a) currently prohibits newspapers from printing, publishing, circulating, issuing, displaying, uttering or disseminating any discriminatory statements or advertisements regarding the sale, lease, sub-lease rental or assignment of any real property. The proposed amendment to N.J.A.C. 13:9-1.1(a) would clarify that this prohibition applies to any type of posting, advertisement or listing related to real property in any form of media and applies to “any person,” including, but not limited to, newspapers. Consistent with this change, the Division proposes to delete the term “Newspaper” from the heading of the chapter. Further, to ensure that the agency’s rules are consistent with the prohibition against discriminatory advertising of real property contained in N.J.S.A. 10:5-12(g)(3) and (h)(3), N.J.A.C. 13:9-1.1(a) is amended to clarify that the rules apply both to those who “make, print, publish, circulate, issue, display, post, utter or disseminate” discriminatory advertisements and statements and to those who cause them to be made, printed, published, circulated, issued, posted, uttered or displayed. The proposed amendment to the rule also reflects recent amendments to the LAD by including source of lawful income used for rental or mortgage payments and domestic partnership status as protected classes for purposes of this provision.

N.J.A.C. 13:9-1.1(b) currently prohibits the use of certain language, such as “open to all,” “everybody welcome,” and “no discrimination,” on the ground that these phrases might tend to influence, encourage or discourage persons because of their membership in a protected class. Because of concerns raised by HUD regarding possible constitutional implications of this provision, the proposed amendment deletes the current language of N.J.A.C. 13:9-1.1(b). Similarly, the Statement that is contained in the existing chapter that explains the prohibitions in the deleted rule was deemed unnecessary and is deleted as part of the readoption proposal. Moreover, while the LAD’s prohibition of discrimination in the rental of real property does not apply to certain owner-occupied dwellings as defined in N.J.S.A. 10:5-5n, the prohibitions against discriminatory

advertising do apply to those types of properties. Therefore, proposed new N.J.A.C. 13:9-1.1(b) clarifies that the prohibited discriminatory advertising activities delineated in this section include those relating to the rental of 1) a single apartment or flat in a two-family dwelling, the other occupancy unit of which is occupied by the owner as a residence at the time of such rental; and 2) a room or rooms to another person or persons by the owner or occupant of a one-family dwelling occupied by the owner or occupant as a residence. This clarification was required by HUD to enable the Division to obtain substantial equivalency certification.

As the Division has provided a 60-day comment period on the notice for this proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

The rule proposed for readoption with amendments will have a beneficial social impact on the residents of New Jersey by clarifying that discriminatory advertising in all forms is prohibited, and by incorporating recent amendments to the LAD regarding discrimination based on source of lawful income for rent or mortgage payments and domestic partnership status.

#### Economic Impact

While the rule proposed for readoption with amendments would expand coverage of N.J.A.C. 13:9 from newspaper advertising to include all forms of advertising, including newspapers, the rule proposed for readoption with amendments should not have any economic impact on the real estate industry or others conducting real estate transactions since all legal obligations arising under the rules are already mandated by Federal law and the State's Law Against Discrimination, at N.J.S.A. 10:5-12g(3) and h(3). The proposed amendments will have a positive economic impact on the State as it will permit the Division to enter into a work-sharing agreement with HUD, allowing the Division to become eligible for Federal funding for case processing and other outreach initiatives.

### Federal Standards Analysis

A Federal standards analysis is not required because the rule proposed for readoption and the proposed amendments do not exceed Federal standards. The Federal Fair Housing Act prohibits discriminatory advertising based on race, color, religion, sex, disability, familial status or national origin related to sale or rental of real property. See 42 U.S.C. 3604(c). The proposed amendments are consistent with the FHA's prohibitions against discriminatory advertising and, in some cases, were required by HUD in order for the Division to achieve certification as a substantially equivalent agency. To the extent that the prohibitions against discrimination based on marital status, sexual orientation, source of lawful income used for rent or mortgage payments and domestic partnership status exceed applicable provisions in the FHA, such provisions are mandated by the LAD.

### Jobs Impact

The Division believes that the rule proposed for readoption with amendments will have no impact on the number of jobs in the State.

### Agriculture Industry Impact

The Division believes that the rule proposed for readoption with amendments will have no impact on the agriculture industry.

### Regulatory Flexibility Analysis

The rule proposed for readoption with amendments may affect small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., to the extent that such small businesses are involved in placing or publishing advertisements related to real estate transactions. However, the rule proposed for readoption with amendments will not impose any reporting or recordkeeping requirements. While the rule proposed for readoption with amendments may impose compliance requirements on small businesses, the rules do not impose any new legal obligations that are not already required by Federal law and the Law Against Discrimination, at N.J.S.A. 10:5-12g(3) and h(3). The rules are consistent with the coverage of the LAD, which

prohibits discriminatory statements in real estate advertising by all persons and entities, regardless of size. To the extent that the rules proposed for readoption with amendments will clarify the advertising restrictions of the LAD, the Division believes that professional services should not be required for compliance.

### Smart Growth Impact

The Division does not anticipate that the rules proposed for readoption with amendments will have any impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan, otherwise known as the State Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## CHAPTER 9. [NEWSPAPER] ADVERTISING RELATING TO REAL PROPERTY [STATEMENT

It is a violation of the Law Against Discrimination, N.J.S.A. 10:5-1 et seq., for a newspaper to print, publish, circulate, issue or display any advertisement relating to real property or public housing which is discriminatory on the basis of race, creed, color, national origin, ancestry, marital status, sex, nationality, handicap, affectional or sexual orientation or familial status. N.J.S.A. 10:5-12e, f, g(3), h(3). The law is couched in very broad terms and includes the prohibition of any ad for the sale, lease, rental, assignment or sublease of any real property which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, ancestry, marital status, sex, nationality, handicap, affectional or sexual orientation or familial status. It is evident that newspapers may not publish in this State any advertisement which would aid such discrimination, when the content of the advertisement be overtly or subtly discriminatory.

In actual practice, such phrases as "integrated," "open to all," "everybody welcome," in newspaper ads of housing for sale or for rent, usually mean just the opposite of what they say. It

is evident that these ads invariably are for homes or apartments in neighborhoods which are already segregated. The publishing of such ads helps to continue and to extend the segregation. A landlord or property owner who truly intends to rent or sell his or her property, without distinction based on race, is merely obeying the law and serves no honest purpose in proclaiming his or her law-abiding character (at so much per line) in a newspaper ad. The burden of interpretation placed upon newspapers publishing or circulating in this State would be onerous without some clarification of the law's broad interdiction.]

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 13:9-1.1 Discriminatory advertising regarding realty

(a) It shall be a violation of the Law Against Discrimination, N.J.S.A. 10:5-1 et seq., for **any person, including** any newspaper **or publication**[,] published or circulated within this State, to **make**, print, publish, circulate, issue, display, **post**, utter or disseminate **or to cause to be made, printed, published, circulated, issued, displayed, posted, uttered or disseminated** any **notice, listing, statement, sign or** advertisement regarding the sale, lease, sub-lease, rental, or assignment of any real property, which expresses, overtly or subtly, directly or indirectly, any **preference**, limitation, specification, or discrimination as to race, creed, color, national origin, ancestry, marital status, **domestic partnership status**, sex, nationality, [handicap]**disability**, affectional or sexual orientation, **source of lawful income used for rental or mortgage payments** or familial status, as such terms may be defined in the Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

[(b) The use of any language such as "colored," "white," "restricted," "open occupancy," "interracial," "segregated," "integrated," "open to all," "everybody welcome," "no discrimination," "mixed," or any other word, term, phrase or expression which tends to influence, persuade or dissuade, encourage or discourage, attract or repel, any person or persons because of race or color shall be considered discriminatory advertising in violation of the Law Against Discrimination,

N.J.S.A. 10:5-1 et seq.]

**(b) This section applies to real property as defined in the Law Against Discrimination,  
N.J.S.A. 10:5-1 et seq. , public housing and the rental of:**

**1. A single apartment or flat in a two-family dwelling, the other occupancy unit  
of which is occupied by the owner as a residence at the time of such rental; and**

**2. A room or rooms to another person or persons by the owner or occupant of  
a one-family dwelling occupied by the owner or occupant as a residence at the time of  
such rental.**